No. 21-5859

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Shikeb Saddozai, In pro se — PETITIONER
(Your Name)

vs.

Xavier Becerra; William J. Sullivan RESPONDENT(S)

FILED
SEP 23 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shikeb Saddozai
(Your Name)

31625 Highway 101, P.O.BOX 1050,
(Address)

Soledad, California, [93960], (SVSP)
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether Petitioner seeking a COA demonstrated a substantial showing of the denial of a Constitutional right and that jurist of reason would find it debatable whether the district court was correct in its procedural ruling under test Slack v. McDaniel,529 U.S. 473,483 (2000).

2. Whether the district court properly dismissed all seven habeas claims on the basis they were barred by the AEDPA statute of limitations.

3. Whether district court and Court of Appeals 9th Cir. correctly detirmined that appellant failed demonstrating a prima facie case.

4. Whether the Courts correctly detirmined that appellant had failed to make a sufficient showing of ineffective assistance of counsel as grounds for untimely appeal of conviction to merit further proceedings on that issue in the court.

5. Whether district court correctly detirmined that appellant had failed to make a sufficient showing of Brady material showing "actual innocence" to merit further proceedings on that issue in the district court and U.S. Court of Appeals 9th Cir.

6. Whether the Court correctly detirmined that petitioner was in custody under conviction or sentence under attack at the time petition for writ of habeas corpus was filed.

7. Whether the District Court and U.S. Court of Appeals for the 9th Circuit standard of review was deficient with relevant decisions of this court and erred denying petitioner's properly stated rule of law.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

William J.Sullivan

M.B.Atchley

RELATED CASES

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Court of Appeals First Appellate Dist.Div.5 court appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 22,2021.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was October 10,2018. A copy of that decision appears at Appendix ___C___.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

On August 18,2015, Appellant Shikeb Saddozai,pleaded no contest to felony sexual penetration in and for the County of San Mateo Superior Court in PEOPLE OF THE STATE OF CALIFORNIA v. Shikeb Saddozai, Case No.SC078812-A,(NF415482A), and sentenced to 32 months in State Prison with 4 years supervised parole on ankle monitor and made to register under Penal Code § 290,for his life time with genetic marker, and $10.000.00 restitution.

On October 9,2015,judgment was pronounced by the court and appellant did not challenge or appeal his plea due to relying on promises by trial attorney and district attorney, appellant would receive a suspended sentence and probation by agreeing to forgo trial by jury and consent to the entry of the plea of guilty under inducement of alleged promises.

Appellant did not learn that these representations were untrue untill after judgment and sentence had been imposed. On or about November 3.2015,days following pronouncement of judgment appellant was removed from San Mateo County Jail and sent to San Quentin State Prison,where appellant immediately wrote to trial counsel and Deputy District Attorney,reminding them of the promise of probation and suspended sentence and appellant did not receive a response.

Appellant did not know trial attorney had failed to commit to promise and even abandoned appellant's request to file appeal without notice or instruct appellant as to the proper procedures or see that appellant has counsel to file appeal on breach. The date of which appellant discovered the

factual predicate of trial attorney's ineffectiveness of assistance was not the date on which appellant became aware of the facts that appellant was prejudiced by trial attorney's deficient performance and fraud, nor did the court or trial attorney order a probation report for felony conviction and imposition of sentence was made without informative report needed to assist in disposition and would bring out facts proving appellant relied on trial attorney promises on probation and suspended sentence.

Appellant new facts presented in Certificate Of Appeal to the U.S. Court of Appeals for the Ninth Circuit were not known and kept from appellant and appellant could not exercise due diligence,have discovered them at the time substantially earlier than the time of appellant's motion for writ of habeas corpus In re Shikeb Saddozai,Case No.5:18-cv-07337-EJD, and at all times appellant maintains his "Actual Innocence".

Pursuant to 28 USC §2253, Rule 22 FRAP,and Ninth Circuit Rule 22-I(d),Appellant submitted motion to Ninth Circuit for issuance of a Certificate of Appealability (COA),following denial of a COA by the district court. On March 5,2020, judgment was entered,summarily denying appellant's petition for writ of habeas corpus,and dismissing the action with prejudice.(Dkt.23). The judgment incorporated a contemporaneous order by the district court judge that the petition for writ of habeas corpus be "denied on the sole basis that all claims raised are barred by the statute of limitations".

(Dkt.23,24,30). On April 13,2020,Appellant filed a timely Notice of Appeal from judgment of dismissal.(Dkt.23).

On March 5,2020,the district court issued a memorandum no certificate of appealability is warranted on this case and order denying the motion for COA on the basis that, petitioner has not shown "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find, it debatable whether the district court was correct in its procedural ruling, "under test Slack v. McDaniel,529 U.S. 473,483(2000).(Dkt.23)

On January 4,2021,appellant filed a motion to extend the 35-day time limit under Circuit Rule 22-1(d),within which to file a motion for COA in the court.(Dkt.11).

On July 22,2021, Appellant's request for a certificate of appealability(Dkt.No.13) to the U.S.Court of Appeal for the Ninth Circuit was denied, claiming appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a Constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

REASONS FOR GRANTING THE PETITION

In the U.S. Supreme Court decision in Miller-El v. Cockrell,537 U.S. 322,123 S.Ct.1029 (2003),this Court clarified the standards for issuance of a COA.

Petitioner seeking a COA need only demonstrate a " substantial showing of the denial of a constitutional right". Petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district courts resolution of his constutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.Id,123 S.Ct. at 1034,citing Slack v. McDaniel,529 U.S.473,484,120 S.Ct.1595 (2000).

Reduced to its essentials,the test is met where the petitioner makes a showingthat "the petition should have been resolved in a different matter on that the issues presented were 'adequate to deserve encouragement to proceed further'. "Id,at 1039,citing Barefoot v. Estelle,463 U.S. 880(1983).

This means that the petitioner does not have to prove that the district court was necessarily "wrong" -just that its resolution of the constitutional claims is "debatable".

As it is stated in Slack,where a district court has rejected the constitutional claims on the merits,the showing required to satisfy § 2253(c) is straight forward: the petitioner must demonstrate that reasonable jurist would

find the district court's assessment of the constitutional claims debatable or wrong. Applying the above standard for granting a COA,this court has acknowledged that the standard is relatively low". Jennings v. Woodford,290 F.3d 1006,1010 (9th Cir.2002)[citing Slack,at 483]. Moreover,because the COA ruling is not an adjudication of the merits of the appeal it does not require a showing that the appeal will succeed. Miller-El v. Cockrell,supra,537 U.S. at 337.

Finally doudts about the propriety of a COA must be resolved in the petitioner's favor.Lambright v. Stewart,220 F.3d 102,1025(9th Cir.2000)[en banc].

Reasonable jurists could differ as to whether the District court preperly dismissed all seven habeas claims in the petition on the basis that they were barred by the AEDPA statute of limitations. In Slack v. McDaniel,supra 529 U.S.473, the Supreme Court explained that detirmining whether a COA should issue where a habeas corpus petition has been dismissed on procedural grounds has "two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding". Id.,at 485.

Both of these components are addressed,respectively,in Parts A and B,as follows:

A. Addressing for convenience,the second component first the appropriate inquiry is "whether jurists of reason could conclude that the district court's dismissal on procedural

grounds was debatable or incorrect". Id.,at 485.

In the instant case,the district court considered appellant's COA unwarranted, which addressed the component of the Slack test which is directed at thedistrict court's procedural holding,and found that Petitioner had not "satisfied" this test.

B. The district court denied a COA on the basis that the appellant had not met the constitutional claims component. As demonstrated below,however, the district court and Court of Appeals for the Ninth Circuit used a fundamentally wrong standard in detirmining whether the constitutional claims component has been satisfied in a case such as this one,where the district court has dismissed the petition on procedural grounds. In such circumstances, the court must look soley to whether, for each claim,the petitioner has "facially alleged the denial of a constitutional right". See,e.g.,Lambright v. Stewart,220 F.3d 1022,1026 (9th Cir.2000)[emphasis added].

By failing to apply this required test, and instead applying a test based on the court's cursory review of the merits a test which directly contradicts the Lambright test, and for which there is no authority whatsoever the district court clearly erred in finding that each of the claims set forth in the petition failed to satisfy the constitutional claims component of Slack.

The rules set out in Lambright for detirmining whether habeas claims which were dismissed on procedural grounds have satisfied Slack's constitutional claims component have been consistently followed in this court.

In Petrocelli v. Angelone,248 F.3d 877(9th Cir.2001), a case in which the district court had dismissed a habeas petition on procedural grounds, this court first found that "jurists of reasons would find it debatable whether the district court was correct in its procedural ruling". The court then proceeded to the second part of the COA analysis under Slack, "namely whether jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right". Petrocelli,supra,at 885,citing Slack,supra,at 1600-01.

At that point, the Petrocelli,court fully approved the Lambright holding, and applied it to grant a COA as to every claim in the petition that had alleged the violation of a constitutional right:

Because the district court and U.S court of Appeals 9th Cir. dismissed these claims on procedural grounds, petitioner has not had an opportunity to support them on the merits through briefing or argument or the introduction of evidence. In Lambright v. Stewart,220 F,3d 1022(9th Cir.2000),we encountered precisely this situation and we held that "we need not remand for full briefing to detirmine whether a COA can issue". Id. at 1026.

Rather, "we will simply take a 'quick look' at the face of the complaint to detirmine whether the petitioner has facially

takes a quick look at the face of the petition to detirmine whether the petitioner has alleged the denial of a constitutional right.

Applying that rule in the instant case, it is apparent that all claims in petition satisfy the constitutional claims component of Slack:

Ground I. alleges ineffectiveness of counsel to withdraw plea and file timely notice of appeal upon petitioner's demands, misrepresentation and fraud of counsel violated appellant's Sixth Amendment to the U.S.constitution right to effective representation of counsel.

Ground II. alleges denial and obstruction of access to the court's violated appellant's Sixth And Fourth, Fifth Amendment to the U.S. constitution.

Ground III. alleges legal,physical and mental disability of appellant that are grounds for relief under the Federal disabilities Statutes(42 USC § 12101 et seq.; 29 USC §794; Section 504 of the rehabilitation act.

Ground IV. alleges denial of discovery showing "actual innocence" violated appellant's due process and in violation of Brady v. MAryland,373 U.S.83 (1963).(Dkt.23,P.7)

Ground V. alleges appellant maintained actual constructive custody under the conviction or sentence under attack at the time petition for writ of habeas corpus was filed.(Dkt.23,P.3 P.9)

that each of the claims alleged in the Petition satisfies Slack's constitutional component test. Accordingly, and with the district court having already detirmined that the procedural component of Slack has been met, a COA must issue on all claims contained in the petition.

Reasonable jurists could differ as to whether the district court correctly detirmined that appellant had failed to make a sufficient showing of Brady material showing " Actual Innocence" to merit further proceedings on that issue in the district court. Appellant is actually innocent of committing the charged crime; hence, his procedural default cannot be used to deny him the right to have his habeas claim herd on the merits. Schlup v. Delo,513 U.S.298 (1995).

The district court erred in not ordering discovery where Petitioner's allegations of ineffective assistance were supported by the record. Discovery is warranted where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is...entitled to relief. See,United States v. Agurs,427 U.S. 97(1976). While the specific allegations are required, a petitioner need not show that he would prevail on the merits of his claims before receiving discovery.

In jones v. Wood, 114 F.3d 1002,1009-10(9th Cir.1997),the Court remanded case for evidentiary hearing on ineffective assistance of counsel claim to allow petitioner to engage in

in discovery. In the instant case evidence would prove a credible showing of "actual innocence" and show it is more likely than not that no reasonable juror would have convicted the petitioner in light of the new evidence. McQuiggin v. Perkins,(2013) 569 U.S. 383,386,133 S.Ct 1924.

Reasonable jurists could differ as to whether the district court correctly detirmined that appellant failed demonstrating a prima facie case. The district court concluded that appellant's petition for writ of habeas corpus stated a prima facie case for relief and ordered the state to file an answer, motion or other response and fix a time for the state's response. See,Habeas Rule 4.

This is typically done by means of an order to show cause (OSC). See, Cal.Rules of Ct. 4551(c); People v. Duvall (1995) 9 C4th 464,474; In re Sims(2018) 27 CA5th 195,203. the issuance of an (OSC) indicates the district courts preliminary assessment that the petitioner would be entitled to relief. Duvall, 9 C4th at 474. Discovery is not available in a habeas proceeding untill an (OSC) has been issued. Discovery is necessary toensure a full and fair hearing and detirmination of the case regardless of the issuance of an (OSC).See,Brady v. Maryland (1963) 373 U.S. 83, 83 S.Ct 1194.

The district court failed to provide appellant access to materials in the possession of the prosecution to prove grounds claimed-in-petition after the district court detirmined a

prima facie case existed and accepted the facts stated in petition as true.

In a case in which no party has requested discovery and the court believes discovery is necessary to ensure a full and fair hearing and a detirmination of a case, the court has descretion to order discovery on its own motion. See, Board of Prison Terms v. Superior Court(2005) 130 CA4th 1212,1241.

Furthermore the district court failed to recognize that attorney's failure to file an appeal in spite of being instructed to do so by appellant is per se ineffective assistance; in addition, an attorney's failure to advise a defendant about an appeal constitutes ineffective assistance, "when there is reason to think either (1)that a rational defendant would want to appeal or (2)that a particular defendant reasonably demonstrated to counsel that he was interested in appealing" as was in the instant case with appellant. See,Roe v. Flores-Ortega,528 U.S.470,145 L.Ed.2d 985 (2000).

Plaintiff's claims are cognizable under the Fifth,Sixth, Eighth,and Fourteenth Amendment to the U.S. Constitution for relief satisfying elements that a right secured by the Constitution or laws of the United States was violated and courts did not address these issues and has departed from the accepted and usual federal question in a way that conflicts with relevant decisions of this court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

without prejudice
Agent: /s/Dozai/ /s/Web Dozai/ VCC-1-308/207

Date: September 22,2021